Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DAOU SYSTEMS, INC., GEORGES DAOU, DANIEL DAOU, FRED MCGEE, ROBERT MCNEILL AND JOHN MORAGNE,

Petitioners,

v.

GREG SPARLING, EUGENE KRABBENHOFT, PATRICK DE KRUYFF, ROBERT ZARETSKY, ROD FORD, THOMAS V. HAGMAN, RICHARD W. WALSH, RICHARD TORIBIO AND PAUL RABIN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case raises the following questions:

1. Whether a securities fraud plaintiff invoking the fraud-on-the-market theory can adequately allege loss causation, consistent with this Court's recent decision in *Dura Pharmaceuticals, Inc.* v. *Broudo*, simply by alleging a drop in a stock price without specifically alleging how or when the alleged "fraudulent acts" by the defendants ever became known to the market.

2. Whether, given the breadth of discovery in civil actions and the strict pleading requirements of the Private Securities Litigation Reform Act, a securities fraud plaintiff can adequately state a claim based on the alleged statements of "confidential" sources.

LIST OF PARTIES AND AFFILIATES

Petitioners, defendants/appellees/cross-appellants below, are Daou Systems, Inc., Georges Daou, Daniel Daou, Fred McGee, Robert McNeill and John Moragne. On October 28, 2005, Daou Systems, Inc. merged with PRX Acquisitions Sub, Inc. to form Proxicom-Daou, Inc. Proxicom-Daou, Inc. is wholly owned by Proxicom, Inc. There is no publicly held corporation that owns 10% or more of stock in Proxicom, Inc.

Respondents, plaintiffs/appellants/cross-appellees below, are Greg Sparling, Eugene Krabbenhoft, Patrick De Kruyff, Robert Zaretsky, Rod Ford, Thomas V. Hagman, Richard W. Walsh, Richard Toribio and Paul Rabin.

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Petitioners, Daou Systems, Inc., Georges Daou, Daniel Daou, Fred McGee, Robert McNeill and John Moragne ("Petitioners"), respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Order and Amended Opinion of the Ninth Circuit (App. 1-42) after the motion for rehearing is reported at 411 F.3d 1006 (9th Cir. 2005). The opinion of the district court is not reported, but is reprinted at Appendix 104-133.

JURISDICTION

The opinion of the Court of Appeals was issued on February 2, 2005. After the filing of a timely petition for rehearing, the Court of Appeals denied the petition and filed an Order and Amended Opinion on June 21, 2005. (App. 1-42.) Because the Ninth Circuit's Order and Amended Opinion conflict with this Court's decision in *Dura Pharmaceuticals, Inc.* v. *Broudo*, 125 S. Ct. 1627 (2005), a petition for rehearing *en banc* was timely filed on July 14, 2005. The Ninth Circuit denied the petition. (App. 139-140.) This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The provisions of the Securities Exchange Act of 1934, 15 U.S.C. § 78a, et seq., relevant to this petition, including the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Pub. L. No. 104-67, 109 Stat. 737, are reproduced at Appendix pages 141-143.

STATEMENT OF THE CASE

Despite this Court's recent decision in *Dura Pharmaceuticals, Inc.* v. *Broudo*, 125 S. Ct. 1627 (2005), the Ninth Circuit held in this case that the plaintiffs adequately pled the essential element of loss causation in this securities class action even though the complaint does not allege any point in time when the "share price fell significantly after the truth